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Report of the Special Rapporteur on the rights of indigenous peoples on her mission to Brazil

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz, on her mission to Brazil from 7 to 17 March 2016. The main objective of the visit was to identify and assess the main issues currently facing indigenous peoples in the country and to follow up on key recommendations made in 2009 by the previous mandate holder.

Brazil has a number of exemplary constitutional provisions pertaining to the rights of indigenous peoples and was, in the past, a leader in the area of demarcation of indigenous peoples' territories. However, in the eight years since the visit of the previous mandate holder, there has been a disturbing absence of progress in the implementation of his recommendations and the resolution of long-standing issues of key concern to indigenous peoples. The Special Rapporteur noted a worrying regression in the protection of indigenous peoples' rights. In the current political context, the threats facing indigenous peoples may be exacerbated and the long-standing protections of their human rights may be at risk.

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Report of the Special Rapporteur on the rights of indigenous peoples on her mission to Brazil*

Contents

		Page
I.	Introduction	3
II.	Overview of the mission	3
III.	Demographic, legal and policy context	4
IV.	Information presented to the Special Rapporteur	5
	A. Positive measures and initiatives	5
	B. Violence, threats and killings	6
	C. Land demarcation	7
	D. Role of the National Indian Foundation	8
	E. Access to justice	8
	F. Development projects and the duty to consult	9
V.	Emblematic cases	10
	A. Belo Monte	10
	B. Tapajos dam complex and São Luiz do Tapajos dam	12
VI.	General observations	13
	A. Structural issues	13
	B. Violence and discrimination against indigenous peoples	13
	C. Megaprojects, legislative and administrative measures and the duty to consult	14
	D. Land demarcation	15
	E. Health, education and social services	16
	F. Capacity of the National Indian Foundation, paternalism and indigenous peoples in voluntary isolation and initial contact	16
	G. Safeguards of the Brazilian Development Bank	16
	H. Corporate responsibility to respect indigenous peoples' rights	17
	I. Access to justice	17
	J. Recent developments	17
VII.	Conclusion and recommendations	19
	A. Conclusion	19
	B. Recommendations	20

* Circulated in the language of submission only.

I. Introduction

1. The Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz, visited Brazil from 7 to 17 March 2016, at the invitation of the Government. The purpose of the visit was to identify and assess the main issues currently facing indigenous peoples in the country and to follow up on key recommendations made in 2009 by the previous mandate holder, following his visit to Brazil.

2. The Special Rapporteur's visit was prompted by requests on the part of indigenous peoples in Brazil and communications sent by the Special Rapporteur to the Government between 2010 and 2015 regarding the indigenous communities in Mato Grosso do Sul and Raposa-Serra do Sol, the Belo Monte and the São Luiz do Tapajós hydroelectric projects, the demarcation of indigenous peoples' lands and attacks against and killings of indigenous persons defending their human rights.

3. The visit coincided with the heightening of the political crisis in Brazil that led to considerable political upheaval, including the ongoing process to impeach the President and the formation of an interim Government. The Special Rapporteur is closely monitoring the situation and is in communication with the Government of Brazil about her concerns regarding the implications of these political developments and associated institutional, legislative or policy changes for the well-being and survival of indigenous peoples and their enjoyment of land and cultural rights.

4. In the light of the evolving political situation, the report also includes observations on information received by the Special Rapporteur following her visit, which has direct bearing on the issues examined during the visit. The objective of the report is to encourage an open and constructive dialogue with the Government in relation to the realization of the rights of indigenous peoples.

II. Overview of the mission

5. During her visit to Brazil, the Special Rapporteur travelled to Brasilia and to the states of Mato Grosso do Sul, Bahia and Para. She met with representatives of the three branches of Government in Brasilia, including the National Indian Foundation (FUNAI), the Prosecutor General, offices of the Public Prosecutor at the federal and state levels, the Presidents of the Federal Supreme Court and the Superior Court of Justice. She also met with the Minister of Culture; the Secretary of Government; officials from the Ministry of External Relations; the Department of Continuing Education, Literacy, Diversity and Inclusion (SECADI) of the Ministry of Education; the Special Department on Indigenous Health (SESAI) of the Ministry of Health; the Ministry of the Environment; the former Ministry of Social Development and the Fight against Hunger; the Secretary of State for Human Rights under the former Ministry of Women, Racial Equality, Youth and Human Rights; the Executive Secretary and President of FUNAI under the Ministry of Justice; and the Attorney General. The Special Rapporteur also met the Vice-Governor of Mato Grosso do Sul, members of Congress, representatives of the Agriculture and Livestock Federation of Mato Grosso do Sul (FAMASUL); representatives of the European Union delegation and the Embassy of Norway; the United Nations country team; Amazon Cooperation Treaty Organization; members of the National Council on Human Rights; and the Brazilian Development Bank (BNDES).

6. She was invited by members of the Commission on Human Rights and Minorities of the Chamber of Deputies to address the Chamber, along with representatives of the Association of Indigenous Peoples of Brazil (APIB), the Missionary Council for Indigenous Peoples (CIMI) and the Brazilian Anthropological Association (ABA).

7. The Specil Rapporteur visited the Guarani-Kaiowá people in Kurussu Ambá, Guayviry and Taquara indigenous lands as well as the Dourados reserve. She met with the Terena Council in Mato Grosso do Sul; the Tupinambá in Serra do Padeiro and Atikum villages in Tupinambá de Olivença indigenous land. She also spoke to representatives of the Pataxó in Comexatiba indigenous land in Bahia. In Pará, she visited Juruna indigenous land, a Muratu village, Volta Grande and met with representatives of the Parakanã in Apyterewa indigenous land and the recently contacted Arara people in Cachoeira Seca indigenous land. She also met with representatives of the Curuaia and Xipaya in Altamira. The situation of the indigenous peoples in the Tapajós River basin was explained to her by members of the Munduruku, Arara Vermelha, Apiaká, Arapiun, Borari and Tapuia of Pará. She met representatives of more than 50 indigenous peoples from at least 13 states, including the Yanomami, Maxakali, Manoki, Kaingang and Ka'apor and the Amazon Cooperation Network. She also met indigenous students at the University of Brasilia and a wide range of civil society and human rights organizations working in the area of indigenous peoples' rights.

8. The Special Rapporteur expresses her gratitude to the Federal Government of Brazil for its full cooperation, which enabled her to carry out her visit freely and independently. She also expresses her deep gratitude to the indigenous peoples representatives who invited her to visit their communities, indigenous organizations and individuals who assisted in organizing parts of her agenda, as well as indigenous persons who travelled from their communities to meet with her. She thanks the United Nations country team and the Office of the United Nations High Commissioner for Human Rights for their support in ensuring the success of her visit.

III. Demographic, legal and policy context

9. There are approximately 305 groups in Brazil who self-identify as indigenous peoples, speaking over 274 different languages. Despite the fact that they represent only 0.43 per cent of the population, indigenous peoples are present in 80 per cent of Brazilian municipalities. Genocidal colonial processes resulted in the decline of the native population from an estimated five million people, prior to European arrival, to less than one million, today. However, according to the 2010 national census by the Brazilian Institute of Geography and Statistics, the indigenous population is growing.

10. The nine states comprising the Amazon region have the highest concentration of indigenous peoples in terms of diversity and population. The states of Amazonas and Mato Grosso do Sul are home to 20 per cent and 9 per cent of the country's indigenous population, respectively, with the Guarani-Kaiowá comprising 3 percent of the population in Mato Grosso do Sul. By 2015, the presence of 26 isolated indigenous peoples was confirmed through surveys and field activities conducted by FUNAI. Surveys are either in process or pending in relation to over 50 other isolated groups.

11. The progressive 1988 Constitution contains some exemplary provisions for the protection and promotion of indigenous peoples' rights. Recognition is afforded to the country's cultural diversity and two articles in the Constitution address indigenous peoples' rights. Article 231 provides that Indians shall have "their social organization, customs, languages, creeds and traditions recognized, as well as their original rights to the lands they traditionally occupy". It provides protection for these rights, especially in relation to the

exploitation of natural resources on indigenous lands; protects indigenous peoples against dispossession of or forced removal from their lands; and places a duty upon the Union to demarcate the lands traditionally occupied by indigenous peoples and "to protect and ensure respect for all their property". Article 232 provides indigenous peoples and their organizations with standing to sue to defend their rights and authorizes the Public Prosecutor to intervene on behalf of indigenous peoples in all pertinent cases.[1] In 2002, Brazil ratified International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169), which is considered to be ranked above domestic laws.[2]

12. Following consultations with indigenous peoples, the Ministry of Justice and the Ministry of the Environment established the National Policy on Land and Environment Management in 2012 to address the realization of indigenous peoples' rights following land demarcation. The policy aims to ensure practical steps to guarantee indigenous peoples full possession of their lands and recognition of their traditional knowledge and governing capacity over their territories and natural resources.

IV. Information presented to the Special Rapporteur

13. During her visit, the Special Rapporteur received extensive information from indigenous peoples, civil society and representatives of the Government. The present report contains a brief overview of the main themes that were brought to her attention. These include the positive measures and initiatives taken by the Government to implement indigenous peoples' rights and measures taken by indigenous peoples themselves to this end; issues pertaining to reprisals, threats and killings of indigenous peoples; the impact of large-scale development projects in or near indigenous peoples' lands and associated consultation processes; concerns raised in relation to land demarcation processes; the role of FUNAI; and issues pertaining to access to justice.

A. Positive measures and initiatives

14. The Special Rapporteur commends the Government for the measures and initiatives taken to realize indigenous peoples' rights. During her visit, she was informed of the following:

(a) The constructive and proactive role of specialized agencies, such as FUNAI and the Public Prosecutor's Office, aimed at protecting indigenous peoples' rights, despite the difficult circumstances in which they operate, in particular staff working in local FUNAI offices or in remote areas;

(b) The establishment of an internationally recognized legal and administrative framework for the demarcation of indigenous lands and the protection of land rights, including in cases involving isolated indigenous peoples;

(c) The Government's opposition to the proposed constitutional amendment, PEC 215, which would undermine the land demarcation and rights protection framework;

(d) Decisions by the Federal Supreme Court to prevent evictions of indigenous peoples, in particular in Mato Grosso do Sul, São Paulo, Bahia, Rio Grande do Sul and Parana;

[1] See A/HRC/12/34/Add.2, para. 13.

[2] See ILO, "Application of Convention 169 by domestic and international courts in Latin America" (Geneva, 2009), p. 12.

(e) The organization of the first national conference on indigenous policies, aimed at encouraging the State to review and revise colonial-based attitudes and policies towards indigenous peoples, and the establishment of the National Commission on Indigenous Policies;

(f) The engagement on the part of the Minister of Culture with indigenous peoples, based on the recognition of the symbiotic relationship between their cultures and their territorial rights, and the need for policies based on an understanding of their distinct ways of life and protection of their languages;

(g) The establishment of a working group within the National Council on Human Rights to gather and disseminate information on the situation of indigenous peoples' rights in the southern states of Parana, Santa Catarina and Rio Grande do Sul;

(h) Efforts to implement differentiated services for indigenous peoples in the areas of health and education, as recommended by the previous mandate holder in 2009,[3] including acknowledgment of the need to improve the family allowance and other social programmes to avoid negative impacts on indigenous peoples' ways of life and autonomy and to make such services more sensitive and responsive to the specific situations of indigenous peoples.

15. The Special Rapporteur also noted the good practices and proactive approaches on the part of indigenous peoples to pursue the realization of their rights. These include the development of consultation protocols incorporating the consultation and free, prior and informed consent procedures developed by the Wajãpi in Amapá and the Munduruku in Pará; self-demarcation of lands;[4] the formation of alliances with the Quilombola and Ribeirinho communities to strengthen land and self-governance rights such as in Oriximiná in Pará; self-protection of territories, for example, through the use of indigenous forest guards set up by the Ka'apor in Maranhão; and partnerships with judicial bodies to strengthen indigenous conflict-resolution systems, such as that between the indigenous peoples of Roraima and the Federal Supreme Court, and to defend their rights, such as that between the Yanomami and the Public Prosecutor's Office for their right to health.

16. These constitute steps by indigenous peoples towards self-management and self-regulation of their territories and self-determination and autonomy, as envisaged in ILO Convention No. 169, the United Nations Declaration on the Rights of Indigenous Peoples and the Organization of American States draft American Declaration on the Rights of Indigenous Peoples. They should be fully supported by the Government. The Special Rapporteur also commends the active network of civil society organizations assisting indigenous peoples in the assertion of their rights and the establishment of the National Rapporteur on Human Rights and Indigenous Peoples.

B. Violence, threats and killings

17. A matter of pressing concern is the number of documented and reported attacks on indigenous peoples. According to the Missionary Council for Indigenous Peoples, 92 indigenous persons were murdered in 2007; by 2014, that number had increased to 138, with Mato Grosso do Sul having the highest number of deaths.[5] Attacks and killings are

[3] See A/HRC/12/34/Add.2.

[4] In October 2014, the Munduruku opted for self-demarcation of their land.

[5] See Conselho Indigenista Missionário, *Report: Violence against Indigenous Peoples in Brazil: 2014 data* (Brasilia, 2015), p. 74.

frequently reprisals after indigenous peoples reoccupy ancestral lands following long delays in demarcation processes.

18. Community members in Mato Grosso do Sul showed the Special Rapporteur bullet wounds on their bodies and took her to places where family members had been killed. They also recounted incidents of arbitrary arrests and criminalization of their leaders. Fears were expressed that the anti-terrorism law, which has been criticized by a number of United Nations Special Rapporteurs, could be inappropriately applied to indigenous peoples and increase the risk of such criminalization. Likewise in Bahia, the Special Rapporteur received detailed accounts of torture and arbitrary arrests. Staff and members of the Government and civil society organizations working with indigenous peoples also provided her with disturbing accounts of a regular pattern of threats and intimidation by State and private actors.

19. Numerous cases of violence against indigenous peoples in urban settings were reported, with an emblematic and particularly disturbing case being the beheading of a Kaingang baby in Santa Catarina on 31 December 2015. The failure of the mainstream media to report this case was regarded by many people as symptomatic of the general public's growing prejudice against, and hatred towards, indigenous peoples.

20. The recognition by the Government of the need to protect human rights defenders, including indigenous leaders, and the important role that the former Ministry of Women, Racial Equality, Youth and Human Rights played in this regard is noteworthy. However, information provided by communities throughout the country indicates that the programmes remain inadequate for indigenous peoples, partially due to lack of engagement on the part of state governments. There is also a lack of trust in state and border police and, in some cases, even in the federal police, arising from the involvement of officers in incidents of violence against indigenous peoples. In most cases, impunity allows violent practices by private security forces, armed mercenaries and State forces to continue unabated.

C. Land demarcation

21. A constant refrain from indigenous peoples throughout the country was the urgent need to complete the land demarcation processes, as this is fundamental to all their rights. They repeatedly stressed that the State's prolonged lack of effective action and protection is forcing them to reclaim their lands in order to guarantee their survival. Many even stated that if faced with evictions they would not leave their lands and would be prepared to die on them, if necessary.

22. The Special Rapporteur heard that efforts of indigenous peoples to reclaim their lands, resist evictions and protect their territories from illegal activities frequently placed them in conflict situations, as was the case of the Guarani-Kaiowá and Terena in Mato Grosso do Sul, the Pataxó and Tupinambá in Bahia, the Arara and Parakanã in Pará, the Ka'apor in Maranhão and the Guarani Mbya and Kaingang in the southern states of Brazil.

23. The current stagnation of land demarcation processes was attributed to a combination of factors, including:

(a) The debilitation and understaffing of FUNAI;

(b) The lack of political will to conclude demarcation procedures at the ministerial and Presidential level;

(c) A poor understanding of and appreciation for indigenous peoples' distinct ways of life and the absence of human rights training for senior members of the executive;

(d) A constant cycle of administrative delays and the judicialization of almost all demarcation processes by vested interests, coupled with Supreme Court delays in granting final decisions on the cases;

(e) The possibility of political gain by certain actors through misrepresentation of the implications of indigenous land demarcation for small farmers and municipalities, leading to discrimination against and conflict with indigenous peoples;

(f) Long-standing efforts by the legislature to reform demarcation processes and modify environmental legislation so as to facilitate resource exploitation in indigenous lands;

(g) Failure to recognize the compatibility of indigenous lands and conservation units and the role that respect for indigenous peoples' land rights can play in environmental conservation and sustainable development.

24. The urgency for land demarcation is exacerbated by deforestation, destruction of rivers and depletion of soil quality due to intensive monocropping and mining activities, all of which render land and water inadequate for sustaining indigenous peoples' lives. The inadequacy of the State's response to these threats has prompted indigenous peoples to protect their territories and natural resources themselves. At times, this puts their lives at risk, as in the case of the Ka'apor indigenous land in Maranhão and the Manoki indigenous land in Mato Grosso do Sul.

25. Many indigenous peoples and civil society organizations expressed concern about the situation of isolated indigenous peoples in the states of Pará, Mato Grosso, Maranhão, Rondonia and Amazonas. They highlighted the need to strengthen and enhance the efforts of FUNAI to ensure respect for their rights and protect their territories, including through dialogue and cooperation with bordering countries.

D. Role of the National Indian Foundation

26. The Special Rapporteur received information from indigenous peoples throughout Brazil in relation to the important role that FUNAI and the Public Prosecutor's Office play in the protection of their rights. Governmental agencies and ministries also referred to their reliance on FUNAI to realize their own actions and programmes for indigenous peoples. However, it was also stressed that the capacity and local presence of FUNAI were being debilitated to the point where the Foundation may soon no longer be able to fulfil its mandate. Concerns were raised regarding the political, rather than technical basis of the nomination of the President of FUNAI and the implications for the autonomy and ability of the Foundation to fulfil its mandate.

27. Indigenous peoples, civil society and independent experts also expressed fear for the survival of many indigenous peoples in isolation and initial contact, in the light of new and complex threats, including cross-border threats, infrastructure development, agribusiness expansion, Christian missionaries and reduced State protection.

E. Access to justice

28. The growing use by the judiciary of the "security suspension" (*suspensão de segurança*) mechanism — which allows for certain rights to be suspended in favour of other interests — was raised by indigenous peoples as a major concern in the context of development projects. This mechanism allows projects to proceed even if they may result in serious violations of indigenous peoples' rights and the State has not complied with the duty to consult in order to obtain the free, prior and informed consent of stakeholders.

29. The Special Rapporteur was informed that some judicial decisions continue to refer to indigenous peoples in a pejorative and discriminatory manner. She was also told that some judges and public defenders seem unable to relate to the reality of indigenous peoples, which places an extra burden on indigenous peoples when they attempt to assert their rights.

30. Indigenous leaders also expressed fear that justice would be denied if their rights to their lands that have not yet been demarcated were to be extinguished without their consent in negotiations between the Government and third parties.

31. Information received by the Special Rapporteur indicate that impunity is pervasive in relation to serious violations of indigenous peoples' rights, including killings of their leaders. Such intimidation, attacks and killings frequently arise in contexts where indigenous peoples attempt to assert their rights over their lands and go hand in hand with the criminalization of indigenous leaders.

32. The Special Rapporteur was seriously concerned about reports of adoptions of indigenous children authorized by judges without due respect for the rights of the children as set out in the Convention on the Rights of the Child, the rights of their extended families, who, in indigenous cultures, traditionally play an important role in such contexts, and the rights of their communities.

F. Development projects and the duty to consult

33. Indigenous peoples reported dire threats to their rights and existence in the context of large-scale or high-impact development projects, including megaprojects such as the construction of hydroelectric dams and infrastructure, mining and the laying of transmission lines, that are launched without meaningful consultation to seek their free, prior and informed consent in accordance with ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples.[8] Concerns were also raised in relation to attempts to change or enact national legislation that directly impact their rights, such as the Mining Code, without meaningful prior consultation with concerned indigenous peoples.

34. A number of megaprojects that have serious implications for indigenous peoples' rights were brought to the attention of the Special Rapporteur. These include projects for which no prior consultation took place with indigenous peoples or other minority groups, such as the Quilombola in Oriximina in Para, including bauxite mining and associated hydroelectric power plants, which together constitute a major industrial complex; the pollution of the Rio Doce by the collapse of the Minas Gerais dam and its impact on indigenous peoples, such as the Krenak, who are dependent on the river for their livelihoods and subsistence; and the major transmission line projects inside constitutionally protected and demarcated lands, such as the indigenous lands of the Waimiri-Atroari in Roraima.

35. The Special Rapporteur received extensive information about the construction and operation of the Belo Monte and the Tapajós River basin dams, which raised issues common to many megaprojects in Brazil.

[8] For a discussion of the impact of large-scale development projects on indigenous peoples, see E/CN.4/2003/90.

V. Emblematic cases

A. Belo Monte

36. The Special Rapporteur visited the Juruna people on the Xingu River who are affected by the Belo Monte dam. Since its outset almost 30 years ago, the project has been shrouded in controversy and resisted by the indigenous peoples whose lives it impacts. In 2009, the previous mandate holder noted that indigenous groups and non-governmental organizations had complained that the Belo Monte project was being carried out without adequate mitigation measures and consultations with the affected indigenous communities.[7] In his observations on this case, he highlighted the need for concerted efforts to carry out adequate consultations with indigenous peoples and to endeavour to reach consensus with them on all aspects of projects affecting them. He also stressed that the minimum steps to be taken should include the mitigation and land demarcation measures proposed by FUNAI.[8]

37. A series of prominent national court cases were filed by the Public Prosecutor's Office. However, the judiciary's invocation of the security suspension mechanism prevented legal challenges by indigenous peoples and allowed the projects to proceed without compliance with the State duty to consult to seek the free, prior and informed consent of the affected peoples. The Inter-American Commission on Human Rights issued precautionary measures in 2011,[9] in which it addressed the lack of adequate prior consultation, the inaccessibility of impact assessments and the urgent need to protect indigenous peoples' life and physical integrity. Despite this, governmental authorizations were issued for the project to proceed.

38. Notably, in November 2015, the Brazilian Institute of Environment and Renewable Natural Resources (IBAMA) granted Norte Energia S.A. an operating licence, notwithstanding documented reports by FUNAI of non-compliance with the conditions stipulated in the 2010 request.[10] Similar advice from the Public Prosecutor's Office not to approve the project until the necessary mitigation measures were in place was ignored.

39. At the time of the Special Rapporteur's visit in March 2016, construction of the dam had been completed and the reservoirs were being filled. As foreseen by the affected indigenous peoples, the dam has resulted in their loss of control over their lands, rivers and resources. Although the dam itself is not located within demarcated indigenous lands, it directly affects the indigenous peoples in the surrounding 11 indigenous lands.

40. During her visit to the area, the Special Rapporteur was informed of the lack of meaningful and culturally appropriate information and consultations and the successful attempts to divide the communities. Community members and their representatives rejected the notion that the Government or Norte Energia had adequately consulted them or informed them of the potential impacts during any of the phases of the project. They said that public hearings on the project were grossly inadequate compared with the standard of consultation provided for in ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples and explained that no efforts had been made to obtain

[7] See A/HRC/12/34/Add.2, para. 57.

[8] See A/HRC/15/37/Add.1, para. 53.

[9] See Inter-American Commission on Human Rights, PM 382/10 (2011).

[10] See FUNAI, Report No. 233/2015/CGLIC/FUNAI-MJ (Brasília, 23 September 2015), attachment to official letter 410 of 24 September 2015, and IBAMA, Technical report No. 02001.003622/2015-08 (23 September 2015).

their free, prior and informed consent and no opportunities had been provided for their participation in decision-making. The Special Rapporteur was also informed that adequate impact assessments had not been conducted or shared.

41. The communities described how their traditional livelihoods based on fishing and hunting were no longer possible as river currents had been radically changed, the water had turned turbid and fish stocks had decreased. They explained that mosquito-transmitted illnesses had increased, extensive areas had been deforested, islands had been submerged and peoples had been displaced. Inadequate and inappropriate housing has been provided for those displaced by the dam, sometimes to places which lacked access to the Xingu River.

42. The Special Rapporteur was particularly alarmed to learn that mitigation measures and enabling conditions identified as necessary for the project to proceed had not been implemented, which compounded the serious impacts on indigenous peoples' lives and rights. The demarcation of Cachoeira Seca indigenous lands[11] as well as regularization and full protection of Apyterewa and Paquiçamba indigenous lands had not proceeded in accordance with the agreed time frames. Adequate compensation had not been provided for loss of livelihoods, nor had participatory monitoring units to protect indigenous lands been established and the local FUNAI has been weakened rather than strengthened.

43. Meanwhile, the measures taken had compounded the harm — including the distribution of processed foods to the communities, allegedly to quell opposition to the project —, with the effect of accelerating the loss of traditional livelihoods. Communities complained that they lacked drinking water and health services and had become dependent on markets in faraway Altamira to sell what produce they can to purchase food.

44. Communities residing along the river face unannounced release of water or declines in water levels, resulting in stagnant pools of water near their homes which attract hordes of disease-bearing mosquitos. These pools were visible in the community that the Special Rapporteur visited. Members of that same community explained that, in January 2016, Norte Energia had opened the floodgates with no advance warning, causing the river level to rise by seven metres in one hour and washing away their boats, which had yet to be replaced at the time of the Special Rapporteur's visit.

45. On 7 December 2015, a case was filed by the Public Prosecutor's office in Altamira against the Government and Norte Energia, alleging ethnocide as a result of the impacts of the project — a reflection of the gravity of the impacts of such megaprojects and the inadequacy of the associated mitigating measures. Another case was opened by the Inter-American Commission on Human Rights against Brazil on 21 December 2015, illustrating the serious ongoing concern about the well-being of the affected indigenous peoples at the national, regional and international levels.

46. A licence was issued by the government of Para for the Belo Sun gold mining project, which is in close proximity to the Belo Monte dam and which directly affects the Juruna community. This proceeded in the absence of consultations to obtain the free, prior and informed consent of the indigenous peoples concerned and without the conduct of an urgently needed cumulative assessment of the environmental, social and human rights impacts. The potential impacts are therefore a matter of very serious concern.

[11] The demarcation of Cachoeira Seca lands, a precondition for the construction of the dam, was done following the Special Rapporteur's visit.

B. Tapajós dam complex and São Luiz do Tapajos dam

47. According to information provided to the Special Rapporteur, there are 10 indigenous peoples in 118 villages in the Tapajós River basin, an area extraordinarily rich in animal and plant biodiversity. The Munduruku, who number around 13,000 people, is the largest group, and the presence of isolated peoples has also been documented in the Tapajós region.

48. Munduruku representatives with whom the Special Rapporteur met described the sacredness of the river, forests and resources. They explained that they were now living under a constant threat as a result of the Tapajós project, but emphasized their unity in their struggle to protect their territory and prevent its destruction. In order to facilitate meaningful consultations, they developed a consultation protocol which they presented to the Government in January 2015; they have not yet received any response. Instead of culturally appropriate prior consultations, individual households had allegedly been approached by a consulting firm employed by Grupo de Estudo Tapajos and offered compensation to abandon their opposition and debilitate indigenous collective decision-making in relation to the project. As in other projects, so-called public hearings were being conflated with the State duty to consult indigenous peoples. In addition, concerns had been expressed on the use of security forces to intimidate the Munduruku and other indigenous peoples opposed to the project.

49. Extensive documentation was provided to the Special Rapporteur alleging violations of indigenous peoples' rights in the context of the Tapajós dam complex. In addition to the absence of good faith consultations to obtain the free, prior and informed consent of the affected peoples were the failure to demarcate indigenous lands affected by the project and the conduct of inadequate environmental and social impact assessments after political decisions regarding the dams had been taken. These assessments are reported to have grossly underestimated the impacts on indigenous peoples' rights and the risks associated with the dams and ignored the unique relationship that indigenous peoples have with their territories, upon which their cultural and physical survival depends.

50. There also appears to be a lack of a cumulative impact analysis of dam cascades at the river basin level and the associated impacts on indigenous peoples' livelihoods. The necessary mitigation and compensation measures have reportedly not been adequately costed, rendering the economic viability studies unreliable and posing further threats to the well-being of the indigenous peoples.

51. The Tapajós complex facilitates a number of other activities that impact directly on indigenous peoples' rights, including illegal mining (*garimpo*) and logging activities and the construction of roads and ports. Logging concessions in the Itaituba II national forest, which overlaps the Sawré Muybu indigenous land, and the Crepori national forest, which impacts Munduruku lands, were issued by the Ministry of the Environment without prior consultation. The Public Prosecutor has opened legal cases regarding these concessions and obtained favourable preliminary decisions, but a significant risk of further logging remains.

52. As was the case in the Belo Monte project, cases filed by the Public Prosecutor addressing human right violations of the Tapajós complex have been subject to the security suspension mechanism, thus rendering ineffective another judicial decision affirming that consultation with indigenous peoples had to take place prior to granting an operating licence for the dam.

53. Following the visit by the Special Rapporteur, in April 2016, the then Government took a number of steps to protect the rights of the Munduruku. This included initiating the demarcation of Sawré Muybu territory and suspending the licensing procedure of the

Ministry of the Environment for the São Luiz do Tapajos dam, based on the position taken by FUNAI that the project was incompatible with indigenous peoples' constitutional rights.

VI. General observations

54. The challenges facing many of Brazil's indigenous peoples are enormous. The origins of these challenges range from historically based and deeply entrenched discrimination of a structural nature, manifested in the contemporary neglect and denial of indigenous peoples' rights, to more recent developments associated with changes in the political landscape.

55. Serious challenges to indigenous peoples' rights arise in the context of increasing discrimination, as manifested in demonstrations against indigenous peoples, stalled demarcation processes, including approximately 20 land demarcations pending Presidential ratification and ministerial declaration, ongoing evictions and constant threats of further evictions, profound and ever-increasing impacts of megaprojects located in or near indigenous peoples' territories and implemented without meaningful prior consultations to obtain the free, prior and informed consent of the affected peoples, violence, racism, killings, threats and intimidation perpetrated with impunity against indigenous peoples and those who work with them, inadequate protection for indigenous communities and their leaders and increasingly frequent criminal allegations against them.

56. As a result of these challenges, the Special Rapporteur believes that, today, indigenous peoples face more profound risks than at any time since the adoption of the Constitution in 1988. Some of her concerns and observations are highlighted below.

A. Structural issues

57. The concentration of economic and political power in the hands of a small segment of Brazilian society has historically contributed to the exploitation of the lands and resource of indigenous peoples, without consideration for their rights or well-being.

58. During her visit, the Special Rapporteur repeatedly heard reports that individual, political and economic gain has contributed to institutional racism, violations of indigenous peoples' rights and conflicts, including in the context of decisions pertaining to megaprojects and exploitation of natural resources in indigenous lands.

59. The observation of the previous mandate holder that "indigenous peoples as a whole are disadvantaged economically and in terms of access to political power in relation to most of the rest of Brazilian society"[1] would, unfortunately, appear to be even more pertinent today, with indications of deep-seated structural discrimination towards indigenous peoples being on the increase and institutional changes serving to further disempower them.

B. Violence and discrimination against indigenous peoples

60. The Special Rapporteur is particularly concerned at the level of racially based violence against indigenous peoples in the states of Mato Grosso do Sul, Pará, Bahia, Maranhão, Rio Grande do Sul, Santa Catarina and Paraná. Tackling and eliminating racism, discrimination and violence against indigenous peoples and ensuring protection of the lives of indigenous leaders and community members is an issue that requires immediate and

[1] See A/HRC/12/34/Add.2, para. 9.

concerted action. She is extremely concerned that states, such as Pará, with an alarmingly high rate of murders of human rights and environmental defenders, including indigenous peoples, have no policy for the protection of human rights defenders and no functioning partnership with the federal programme.

61. The Special Raporteur was extremely alarmed that a series of armed attacks, leading to the injury of indigenous peoples in the communities of Kurussu Amba, Dourados and Taquara in Mato Grosso do Sul, were carried out immediately followed her visit to these areas. Equally alarming is the fact that, some days after these incidents took place, indigenous peoples reported that no State authority had visited the areas.

62. The Special Rapporteur decries these attacks and calls on the Government to put an end to such human rights violations, to investigate them and to bring their intellectual authors and perpetrators to justice. She commends the Prosecutor General and the Public Prosecutor for carrying out the investigation into the violent attacks of 14 June 2016 in Mato Grosso do Sul and for denouncing 12 people involved in using militias against indigenous peoples. She urges the judiciary to promptly conclude the process and hold those responsible to account.

C. Megaprojects, legislative and administrative measures and the duty to consult

63. The Special Rapporteur is concerned that prior consultations were not carried out with affected indigenous peoples in relation to megaprojects such as the Belo Sun gold mine in Pará and the Manaus-Boa Vista transmission line in Roraima. She is also concerned that, in relation to the Belo Monte and São Luiz do Tapajós dams, mere public hearings were deemed to fulfil the obligation to consult. In general, there is no adequate mechanism for consultation with indigenous peoples in relation to major development projects.

64. In addition, no consultation procedure has been established in relation to policies or legislative and administrative measures that directly impact indigenous peoples. This lack of consultation is highly problematic, given the continued attempts in the National Congress, where indigenous peoples have little to no representation, to weaken the constitutional and legislative protections of their rights. These include proposals for constitutional amendment PEC 215, which would transform land rights recognition from a technical to a political process and legislation, such as the new Mining Code, and changes to licensing procedures for megaprojects, which undermine indigenous peoples' rights to lands, territories and resources and do not include adequate safeguards.

65. These actions constitute a failure on the part of the Government to implement good faith consultations with indigenous peoples in order to obtain their free, prior and informed consent. Such consultations are necessary to protect indigenous peoples' rights in accordance with the State duty set out in the domestic legal framework, ILO Convention No. 169, the United Nations Declaration on the Rights of Indigenous Peoples and international and regional human rights treaties and jurisprudence.

66. The Special Rapporteur is concerned that the State's interpretation of when its duty to consult corresponds to the requirement to obtain the free, prior and informed consent of indigenous peoples is not consistent with the provisions and purpose of the legal instruments that protect indigenous peoples' rights, including their right to self-determination by which they determine their own social, cultural and economic

development and maintain and develop their autonomous ways of life, and their right to cultural and physical survival as peoples.[11]

67. The Special Rapporteur is particularly concerned about the potential impact on indigenous peoples of the Tapajós dam complex. Impacts similar to those in the Belo Monte project appear inevitable unless there is full compliance with human rights standards from the planning stages through to project design and operation.

68. The Special Rapporteur welcomes the Government's recognition of the impacts on Sawré Muybu indigenous lands caused by the São Luiz do Tapajós dam and the suspension of the licensing process by the Brazilian Institute of Environment and Renewable Natural Resources in the light of the project's incompatibility with indigenous peoples' constitutionally recognized rights. She is, however, concerned by reports that the land demarcation process may face political obstacles owing to its implications for the licensing processes. Completion of the land demarcation process is essential for the Munduruku and would serve as a first significant step to guaranteeing their human rights and those of other affected peoples.

D. Land demarcation

69. A common theme in discussions with members of the executive was the perception of being hamstrung by the judiciary and the legislature when attempting to protect indigenous peoples' rights and demarcate indigenous lands. Although impediments undoubtedly exist, the Special Rapporteur does not believes that they constitute an acceptable excuse for such lengthy delays in the land demarcation processes and the associated violations of rights leading to violence against indigenous communities. A serious concern is the frequent issuance of eviction orders when indigenous peoples reclaim and occupy lands that they are entitled to under the 1988 Constitution, but which the State has failed to demarcate in the last 28 years. While not necessarily binding in other cases,[12] the highly controversial and strongly contested Supreme Court interpretation of the 1988 Constitution in the Raposa-Serra do Sol ruling — which introduced the temporal framework requiring indigenous peoples to have been in possession of their lands or to have had claims in process when the Constitution was enacted, with no consideration given to how or why they were removed from their lands — imposes constraints on indigenous peoples' rights to possess and control their lands and natural resources and hinders land demarcation. Lower courts as well as the Superior and Supreme Courts[13] are applying the decision in ways that are completely at odds with the indigenous land rights provisions of the Constitution. In so doing, the State is forcing indigenous peoples off their own lands and depriving them of the enjoyment of their basic rights as well as fueling violence against them.

70. The failure of the State to protect indigenous peoples' lands from illegal activities, in particular mining and logging, is a matter of grave concern. Even where indigenous peoples have demarcated territories, such as in the Amazon region, they lack effective control over their resources owing to increasing invasions associated with illegal activities, as in Cachoeira Seca, Apyterewa, Manoki, Yanomami and Ka'apor indigenous lands.

[11] See *Saramaka People v. Suriname*, Judgment of 28 November 2007, Inter-American Court of Human Rights; and A/HRC/24/41, paras. 26-30.

[12] As affirmed by the Supreme Court ruling of May 2016 concerning Yvy Katu in Mato Grosso do Sul.

[13] See the rulings concerning Guyraroka and Limão Verde in Mato Grosso do Sul, and Porquinhos in Maranhão.

E. Health, education and social services

71. Brazil has made efforts to improve and adapt its service provision in relation to indigenous health care, education and social services. However, indicators of indigenous youth suicide, cases of illegal adoption of indigenous children, infant mortality and alcoholism, violence against indigenous women and the accelerated loss of indigenous languages reflect the ongoing lack of culturally appropriate services.

72. The Special Rapporteur is particularly concerned about the health impacts of illegal mining and the use of mercury in Yanomami lands. Their experience and the challenges they face are illustrative of the integral relationship between indigenous peoples' health, education and cultural rights and the realization of their territorial and self-governance rights.

F. Capacity of the National Indian Foundation, paternalism and indigenous peoples in voluntary isolation and initial contact

73. Recently proposed measures to reduce FUNAI budget and staff run completely counter to the demands of indigenous peoples in Brazil. They are also at odds with the recommendations of the previous mandate holder, who had stressed the need to strengthen FUNAI to enable the State to fulfil its legal obligations concerning the protection of indigenous peoples' rights.

74. Despite its challenges, FUNAI appears to have made progress in its efforts to overcome paternalistic postures towards indigenous peoples. However, unless FUNAI is properly supported, this progress is vulnerable to setbacks. Entrenched discrimination and paternalistic views appear to continue to inform law-making, policymaking and judicial decisions by many administrative bodies and authorities. Many regard the current political and institutional weakening of FUNAI as symptomatic of the State's resistance to fully transition to new relationships with indigenous peoples, based on self-determination.

75. The work of FUNAI in relation to indigenous peoples in voluntary isolation is premised on respect for the principle of non-contact, which is understood as a core element of the right of peoples in isolation to self-determination, and has served to inform the guidelines of the Office of the United Nations High Commissioner for Human Rights and the Inter-American Commission on Human Rights and to influence the policies developed by neighbouring countries. In this regard, FUNAI has an important role to play as a contributor to the work of the Amazon Cooperation Treaty Organization, an intergovernmental body established to address the situation of cross-border indigenous peoples in voluntary isolation or initial contact and to promote high-level regional dialogue on the treaty. The Special Rapporteur is, however, concerned that missionary activity is posing a threat to indigenous peoples in initial contact as well as to the traditional forms or organization and autonomy of other remote indigenous groups.

G. Safeguards of the Brazilian Development Bank

76. Despite reassurances from the Brazilian Development Bank (BNDES) that impacts on indigenous peoples are adequately considered in the projects it funds, the Special Rapporteur is concerned that its safeguards and practices are inadequate to ensure protection of indigenous peoples' rights, in particular in the light of the Belo Monte experience and the massive loans provided to agribusiness corporations allegedly involved in evictions and violence against indigenous peoples.

H. Corporate responsibility to respect indigenous peoples' rights

77. The Special Rapporteur highlights the responsibility of businesses sourcing goods or materials, such as sugar, soy or animal produce, from Mato Grosso do Sul, or timber, palm oil or minerals from elsewhere in Brazil, to conduct adequate human rights due diligence to ensure respect for indigenous peoples' rights in their supply chains. Similarly, companies involved in mining, hydroelectric dams, transmission lines or infrastructure projects have a responsibility to conduct due diligence with regard to indigenous rights and assess whether the State has complied with its duty to consult to seek the free, prior and informed consent of indigenous peoples and has guaranteed that the projects will not impact on indigenous peoples' rights.

78. Given the serious nature of violations of indigenous peoples' rights — including allegations of ethnocide — and the failure of the Brazilian authorities to adequately address them or provide effective remedies, particular caution is necessary on the part of corporate actors, including banks, in order to live up to their responsibility under the Guiding Principles on Business and Human Rights,[10] to "know and show" that they are not complicit in or contributing to such rights violations.

I. Access to justice

79. The lack of access to justice for indigenous peoples is a major issue. In Brazil, indigenous peoples face significant barriers in accessing justice owing to a lack of resources, cultural and linguistic barriers, institutional racism and ignorance of their cultures and rights on the part of the judiciary and the law enforcement forces. These barriers are compounded by actions and omissions of the State in relation to consultation and participation rights, the use of mechanisms that deny rights, such as the security suspension by the judiciary, and its failure to give adequate consideration to indigenous peoples' land rights, for example, through the inappropriate application of the Constitution in the Raposa-Serra do Sol ruling. The presumption that land demarcation processes will be brought under the remit of the law is then used as justification to delay demarcation, so that the law is transformed into an obstacle to, rather than an enabler for, the realization of indigenous peoples' rights.

80. The failure to ensure access to justice for indigenous peoples in a context where historical violence against them has gone unaddressed, alongside the increasing criminalization of indigenous peoples and violent attacks and killings with impunity, sends a message to those responsible that there will be no repercussion for their actions. For indigenous peoples, it signals that the State institutions, including the law enforcement and justice systems, lack both the will to ensure that their rights are protected and any genuine concern about their plight.

J. Recent developments

81. The political situation in Brazil changed significantly following the Special Rapporteur's visit, with the appointment of an interim Government and the implementation of a number of institutional changes. The Special Rapporteur is concerned that the political and economic crisis is serving to render indigenous peoples' rights and issues invisible and less significant in the eyes of politicians and the public, to the detriment of addressing structural discrimination and imbalances in power in a manner beneficial to them.

[10] See A/HRC/17/31, annex.

82. The Special Rapporteur also received information regarding an escalation in violence against indigenous peoples and their leaders following her visit. This included reports of increasing violence and discrimination in the states of Santa Catarina and Rio Grande do Sul against the Kaingang, Guaranis and Xokleng peoples.

83. In an alarming incident on 14 June 2016, violent attacks by a group of armed men, reportedly organized by *fazendeiros* (farm or plantation owners), resulted in the death of one Guarani Kaiowa and the injury of several others in Caarapo city, Mato Grosso do Sul. According to information received, the attack occurred in the context of the demarcation of Dourados-Amambaipegua indigenous lands. This land demarcation had been recently initiated following studies by FUNAI, and the community had occupied a parcel of the land.

84. The Special Rapporteur received information on arrests of indigenous leaders in the state of Bahia and has communicated with the Government expressing her concerns. Fears have been expressed that the April 2016 provisional decision of the President of the Supreme Court to suspend the demarcation of the Tupinamba de Olivença indigenous land in Bahia may result in further violence against indigenous peoples. She continues to monitor the situation in both Mato Grosso do Sul and Bahia.

85. Indigenous peoples' representatives provided information on the elimination by the interim Government of the Ministry of Women, Racial Equality, Youth and Human Rights and the establishment of the human rights secretariat under the Ministry of Justice. They expressed concern about the potential indigenous rights implications of this action and other retrogressive measures purportedly being considered in relation to recent demarcation processes of indigenous lands.

86. The Special Rapporteur shares the concerns and fears of indigenous peoples about regression in legal and institutional protections. In this regard, she stresses the fundamental importance of ensuring that changes to government structures resulting from the current political context must not result in setbacks in the protection and promotion of human rights.

87. The Special Rapporteur considers the disbandment of the Ministry of Women, Racial Equality, Youth and Human Rights as a significant regression in Brazil's commitment to protect human rights. She is concerned that this could have a particularly profound impact on indigenous peoples, who are amongst the most in need of protection. In this regard, she is also concerned about the status, functioning and future of the National Council on Human Rights and the recently established National Council on Indigenous Policies.

88. The Special Rapporteur is particularly concerned about reports that the interim Government is considering reversing the ratifications and declarations of indigenous lands implemented by the previous Government, following her visit, including measures to expropriate Condá indigenous land in Santa Catarina. The National Council on Human Rights committed to provide her with additional information on visits to southern Brazil immediately following her visit.

89. Prior to this, the previous Government had taken a number of measures that were in accordance with the Special Rapporteur's preliminary recommendations.[17] These included the presidential ratification of the Cachoeira Seca indigenous land in the state of Pará, the Piaçaguera indigenous land in São Paulo and the Pequizal do Naruvotu indigenous land in Mato Grosso, declarations by the Ministry of Justice of indigenous lands in Mato Grosso

[17] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=18498&LangID=E.

and Mato Grosso do Sul and proactive measures to recognize the rights of indigenous peoples in the Tapajós region and to suspend the dam licensing process.

90. While welcoming the interim Government's reaffirmation of Brazil's open invitation to all special procedure mandate holders, the Special Rapporteur was dismayed to learn that, as part of a congressional investigation on FUNAI and the National Institute for Colonization and Agrarian Reform (INCRA), certain members of Congress raised questions regarding her official visit to Brazil and requested information about the individuals who were involved in it.

91. The Special Rapporteur is concerned that the convergence of these and other worrying developments will have a negative impact on indigenous peoples' rights. She therefore calls upon the Government to implement the recommendations outlined below and to continue to engage in dialogue with her mandate on the increasingly urgent situation of indigenous peoples in Brazil.

VII. Conclusion and recommendations

A. Conclusion

92. **The Special Rapporteur's overall impression, following her visit, is that Brazil has a number of exemplary constitutional provisions pertaining to indigenous peoples' rights and was, in the past, a leader in the area of demarcation of indigenous peoples' territories. However, in the eight years since the visit of the previous mandate holder, there has been a disturbing absence of progress in the implementation of his recommendations and the resolution of long-standing issues of key concern to indigenous peoples. Instead, information received points to an extremely worrying regression in the protection of indigenous peoples' rights. In the current political context, the threats facing indigenous peoples may be exacerbated and the long-standing protections of their human rights may be at risk.**

93. **The Special Rapporteur makes some recommendations to address the most pressing issues she observed during her mission. They relate to the need for urgent measures to address violence and discrimination against indigenous peoples; strengthen State institutions such as FUNAI; build the capacity of State officials, including senior members of the executive and lower court judges, in the light of their inappropriate application of doctrines that deny rights; redouble efforts in land demarcation and protection; allocate resources to improve access to justice; guarantee meaningful good-faith prior consultation and participation of indigenous peoples in relation to large-scale or high-impact development projects and respect for indigenous peoples' own consultation and consent protocols and proposals for addressing development issues; and ensure participatory impact assessments and redress for harm caused.**

94. **Given the marginalized status of indigenous peoples, the fact that serious violations of their rights, over recent decades, have not been adequately investigated or remedied and the urgent need to address ongoing structural discrimination, the Special Rapporteur places particular emphasis on the importance of initiating an independent and transparent national inquiry into violations of their rights. This should be implemented in cooperation with indigenous peoples, with the aim of transforming the State's relationship with them into one that is based on respect, justice and self-determination.**

95. Brazil owes a historical debt to its indigenous peoples who have suffered marginalization and discrimination since the formation of the State. Despite the hardships they have endured, they remain unwavering in their resolution to preserve their lands, to maintain and develop their cultures, customs and languages and to determine their own futures. Rather than being seen as a burden on the State or an obstacle to national development, their contributions to Brazilian society should be widely recognized and fully appreciated and celebrated. With this in mind, Brazil should embark on an inclusive process of belated State-building with its indigenous peoples premised on respectful and just relationships between self-determining peoples.

B. Recommendations

Right to life, violence and racial discrimination

96. The Special Rapporteur respectfully urges the Government of Brazil to:

(a) Take immediate measures to protect the safety of indigenous leaders, including through strengthened and culturally appropriate protection programmes, and to conduct investigations into all attacks and killings of indigenous peoples and bring perpetrators to justice;

(b) Conduct a public campaign aimed at eliminating racism, discrimination, hate speech and violence towards indigenous peoples;

(c) Accord particular and urgent attention to the situation of indigenous children, youth and women, especially in relation to the alarming rates of suicides in indigenous communities, the increasing violence against indigenous women and the illegal adoption of indigenous children.

Land rights

97. The Special Rapporteur recommends that the Government:

(a) Redouble efforts to move beyond the current impasse in relation to land demarcation. This is particularly urgent in the states of Mato Grosso do Sul, Bahia, Santa Catarina and Rio Grande do Sul.[18] The executive should develop, in collaboration with indigenous peoples, proactive proposals to respect and fulfil indigenous rights to land, through a thorough examination of all avenues available. This should include approaches to address the judicialization of demarcation processes and give consideration to appropriate compensation in relation to their repossession of lands, recognized in the 1988 Constitution as indigenous lands, and for which the Federal or state governments granted titles to private individuals;

(b) Complete all demarcation processes pending at FUNAI, the Ministry of Justice and the Presidency, in particular those threatened by development projects, agribusiness expansion and natural resource extraction activities;

(c) Develop concrete and prioritized actions to guarantee environmental protection of indigenous lands and their natural resources and to prevent illegal activities, with due consideration to and respect for indigenous peoples' forms of organization and their special relationship with their lands;

[18] Demarcation processes to be finalized include indigenous lands in Morro dos Cavalos (Santa Catarina), Toldo Imbu (Santa Catarina) and Rio dos Índios (Rio Grande do Sul).

(d) **Ensure that all courts have a clear and uniform interpretation of the limitations of the Raposa-Serra do Sol ruling and its inapplicability to the issuance of eviction orders for indigenous peoples or the halting of demarcation procedures. The Federal Supreme Court should continue to accept requests for the suspension of eviction orders and ensure that future rulings concerning indigenous peoples' rights are fully consistent with national and international human rights standards.**

Self-determination, the duty to consult and free, prior and informed consent

98. **The Special Rapporteur recommends that the Government:**

(a) **In collaboration with representatives of indigenous peoples and in accordance with their right to self-determination, develop a national action plan for the implementation of the United Nations Declaration on the Rights of Indigenous Peoples in keeping with Brazil's commitment at the World Conference on Indigenous Peoples;**[19]

(b) **Implement the State duty to consult indigenous peoples in relation to projects, policies and legislative and administrative measures that have an impact on their rights. Such consultations should be conducted to see their free, prior and informed consent in a manner that takes into account the specificities of each indigenous people, as affirmed in ILO Convention No. 169, the United Nations Declaration on the Rights of Indigenous Peoples and the Organization of American States draft American Declaration on the Rights of Indigenous Peoples. In the case of development projects, consultations should be informed by independent and participatory environmental, social and human rights impact assessments;**

(c) **Acknowledge and support the proactive measures taken by indigenous peoples to realize their rights, including their right to self-determination. This includes observing and responding to consultation and consent protocols developed by indigenous peoples in the context of the State duty to consult;**[20]

(d) **Ensure full respect for the rights of indigenous peoples in voluntary isolation in accordance with the United Nations Declaration on the Rights of Indigenous Peoples and the draft guidelines on their protection.**[21]

Impacts of development projects

99. **The Special rapporteur recommends that the Government:**

(a) **Adopt measures to redress the impacts and consequences of mining activities, agribusiness expansion and other large-scale development projects on indigenous peoples' health, lands, cultures and way of life, including their social and economic forms of organization. These measures should also address the secondary impacts of such projects, which are often associated with speculation and the entry of third parties as a result of increased ease of access to indigenous lands;**

(b) **In the light of the allegations of ethnocide in the Belo Monte case brought by the Public Prosecutor, extreme caution should be exercised in relation to the Belo Sun mining and the Tapajós dam projects. These projects should not be considered if the potential for similar impacts exists or if the indigenous peoples concerned withhold their free, prior and informed consent following the conduct of**

[19] See General Assembly resolution 69/2, para. 8.
[20] See the protocols developed by the Wajãpi in Amapá and the Munduruku in Pará.
[21] See A/HRC/EMRIP/2009/6.

participatory social, environmental and human rights impact assessments and good faith consultations.

Access to justice

100. The Special Rapporteur recommends that:

(a) The judiciary, the legislature and the executive give urgent consideration, in collaboration with representatives of indigenous peoples, to the elimination of barriers that prevent indigenous peoples from realizing their right to justice and guarantee that adequate resources be available to this end;

(b) The Government initiate dialogue with indigenous peoples in relation to the possible conduct of a national inquiry into the allegations of violations of their rights, as well as raise awareness, recognize State wrongdoings and provide redress for human rights violations.

Capacity of government agencies

101. The Special Rapporteur recommends that the Government:

(a) Provide adequate funding to FUNAI, strengthening its capacity to deliver services and its role in protecting indigenous peoples' land and self-determination rights. This necessitates revisiting cuts to its budget and ensuring that local FUNAI offices are not the target of such measures. Local offices should have adequate resources to be able to provide core services that are relied upon by other organs of the State and by indigenous peoples, including those in voluntary isolation. The National Council on Indigenous Policies should participate in the appointment of the President of FUNAI, who should have the necessary technical competence and political independence to fulfil the Foundation's mandate;

(b) Continue to support and strengthen the Special Department on Indigenous Health of the Ministry of Health and the Department of Continuing Education, Literacy, Diversity and Inclusion of the Ministry of Education;

(c) Guarantee conditions for the independent and participative functioning of the National Council on Indigenous Policies;

(d) Develop a more responsive and targeted family allowance programme for indigenous peoples, taking into account their specific situations;

(e) Draw on lessons learned and the experience of FUNAI and the Public Prosecutor's Office in support of the implementation of indigenous peoples' rights and disseminate them among other government agencies, including higher level government officials;

(f) Ensure the provision of specific training and guidance on indigenous peoples' rights to members of the judiciary who address issues such as land rights, prior consultation and adoption of indigenous children. This could include, for example, collegial dialogues with members of the judiciary in countries with an extensive body of jurisprudence on indigenous peoples' rights, such as Colombia.

Recommendations to other actors

102. The United Nations country team should assume a proactive role in promoting awareness of and respect for indigenous peoples' rights in Brazil and assist the Government in the realization of its duty to respect, protect and fulfil those rights. In cooperation with and guided by indigenous peoples, the country team should support indigenous peoples in their efforts to assert and realize their constitutionally and

internationally recognized human rights and to participate in relevant processes of the Human Rights Council, such as the universal periodic review.

103. The Special Rapporteur encourages the Brazilian Development Bank (BNDES) to align its policies with those of other international financial institutions, such as the International Financial Corporation, and to develop specific safeguards aimed at ensuring that it does not fund projects that pose a risk to indigenous peoples' rights. These policies should guarantee that indigenous peoples are consulted, their free, prior and informed consent is obtained and transparent and participatory environmental, social and human rights impact assessments are conducted whenever their rights are potentially impacted by a project funded by the Bank.

104. In keeping with their independent obligations to respect indigenous peoples' rights, corporations, including banks and other investment facilities, should conduct due diligence in relation to indigenous peoples' rights, including their land and consultation and consent rights, both for their own operations and for those in their supply chains. In all cases where human rights have been violated, companies should participate in meaningful remediation processes in consultation with the concerned indigenous peoples, use their leverage to prevent further rights violations and ensure appropriate remediation.

105. The Special Rapporteur reiterates the recommendations of the Working Group on Business and Human Rights on its mission to Brazil in 2016 regarding the need to (a) review the use of the security suspension mechanism in the context of vulnerable communities affected by development projects; (b) promptly carry out indigenous land demarcation and ensure that it remains the responsibility of the executive, contrary to the proposal contained in PEC 215 to place it under the responsibility of the legislature; (c) improve the capacity of and the resources allocated to the Brazilian Institute of Environment and Renewable Natural Resources (IBAMA) and improve coordination between the Institute and FUNAI in order to strengthen the regulation of large development projects and deliver sustained protection for affected communities and enable them to monitor the social and environmental impacts of such projects and the fulfilment of any conditions imposed in mitigation plans.[22]

106. The Special Rapporteur also urges the Government to implement the recommendations from the 2012 universal periodic review that it had accepted, with regard to the need to ensure protection of leaders of indigenous peoples and human rights defenders fighting for their rights; awareness campaigns on the rights of indigenous peoples and the implementation of laws related to them; implementation of consultation and consent rights in accordance with ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples in relation to projects and legislative and administrative measures impacting them; greater protection of their rights to land, territories and resource, as recognized in the Constitution and ILO Convention No. 169; and poverty reduction and social services that directly target indigenous peoples in a culturally appropriate manner.[23]

107. Implementation of the recommendations in the present report as well as the recommendations of the previous mandate holder on his visit to Brazil in 2009, of the Working Group on Business and Human Rights and of the universal periodic review process should proceed with the full and effective participation of indigenous peoples.

[22] See A/HRC/32/45/Add.1, para.70 (k), (l), (q) and (s).
[23] See A/HRC/21/11.

108. **The Government of Brazil should make every effort to address the concerns raised by the Special Rapporteur in the present report and live up to the emblematic global benchmark that Brazil had set for the protection of indigenous peoples in its 1988 Constitution and through its ratification and adoption of international human rights instruments. To realize this, the measures outlined in these recommendations are urgently required.**